MEMO

TO: Attorney David Wiesner, PUC Staff, and interested stakeholders

FROM: Clifton Below, for the City of Lebanon
Henry Herndon, for Clean Energy New Hampshire
Doria Brown, for the City of Nashua
Julia Griffin, for the Town of Hanover
Samuel Golding, for Community Choice Partners, Inc.

RE: Rules for CPAs, Comment on NHPUC Staff Draft Proposal 7-21-20

DATE: September 11, 2020

Thank you for the opportunity to provide comment on and to suggest revisions to Staff's Draft Proposal dated 7-21-20. On behalf of the City of Lebanon Clean Energy New Hampshire, the City of Nashua, the Town of Hanover, and Community Choice Partners, Inc., collectively as Community Power Coalition (CPC), we have attached a marked-up version of Staff's draft showing suggested edits. We have provided brief explanations of many of the suggested edits within that document, but we will comment on the main issues here.

The single biggest point of contention seems to be whether the launch (and planned termination) of a CPA should be linked to the regulatory timing of utility provided default service. After considering both Staff and Utility[1] proposals made thus far, we are convinced that there should be no such linkage in Administrative Rules. There are several main reasons:

1. The Staff and Utility proposals are unrealistic in that they seek to require a new CPA to commit to launching and lock in a commitment to supply and pricing/rates long in advance of knowing the price they are competing with.

2. Staff and Utility proposals to regulate and restrict the timing of CPA launches and terminations in Rules by linking them to the regulatory[2] timing of utility default service procurements will likely result in larger risk premiums to utility default service customers than the City's proposed revisions. We explain further below.

3. Aspects within the Utility proposal are self-conflicting and confounding, e.g.., proposals requiring launch within the first or last 45 days of default service when combined with requirements for CPAs served by multiple utilities.

4. Such linkage is also contrary to legislative intent regarding the purpose clause and overall purpose of RSA 374-F, to harness the power of market competition, and RSA 53-E, to afford small customers the same benefits available to large customers through competitive markets. They are also inconsistent with the Constitution of New Hampshire.

5. There are better, more logical alternative approaches to the Utility and Staff proposed

[1] Eversource, Unitil and Liberty proposed revisions circulated on 9/4.
[2] The timing and structure of utility default service procurement are artifacts of a regulatory process involving a monopoly distribution utility that are established by PUC order, which is intrinsically more flexible than administrative rules, and can change faster than administrative rules can be adopted or modified.

regulations.

6. This over-regulation of Community Power Aggregations (CPAs) is beyond the regulatory authority of the Public Utilities Commission.

7. The entire justification for this heavy-handed regulation of what is meant to be a competitive marketplace is based on an unproven and dubious claim that costs will go up for some customers. Where is the evidence? Where is the data?

Regulating timing of CPA launches by linking to utility default service solicitations has the effect trying to force a CPA to lock into a launch date up to nearly a year in the future with unknown pricing, which no municipal official or informed voter should ever agree to.

First, let us examine the practical implications of Staff's proposal to require 60 days' notice to launch a CPA in advance of issuance of an RFP for the next utility default service solicitation. For an example, Liberty only filed its proposed schedule for its first default service solicitation for 2020 on September 20, 2019 with a proposed RFP issuance date of November 1, 2020.[3] The Staff proposal would have had a CPA waiting to launch between 2/1/20 and 7/31/20 commit to launching by September 1, 2019, 20 days before the CPA even knew the date they had to commit by. To launch in July 2020 a CPA would have had to lock in rates and give notice up to 11 months in advance of such launch. **To be perfectly clear: the regulations proposed by Staff could require a CPA to lock into pricing for an uncertain launch date roughly 11 months in the future.**

It only gets worse when we look at the next default service solicitation. It was not until April 22, 2020 that Liberty[4] and Eversource[5] filed their proposed schedule for an RFP to be issued 8 days later on May 1, 2020 for Liberty and 16 days later for Eversource on May 7 for service starting 8/1/20. So a CPA served by one or both of these would have had to commit to a launch, and presumably lock in pricing, about 7 weeks in advance of even knowing the date that they had to commit and give notice for, and 5 months in advance of the earliest possible launch start period. If they missed that notice deadline of March 1 or 7, 2020, they would have had to wait at least 11 months before the next available launch date, starting February 2021.

Unitil provided its proposed 2020 default service solicitation schedule[6] on March 26, 2020[7] The proposed RFP issue dates were March 3, 2020 and August 25, 2020[8]. So, a CPA with customers in Unitil's service territory would apparently need to be able to read minds well in advance of any public notice, in order to know the applicable deadline. The Utility suggested revisions to the draft proposed rules do at least dispense with the advanced notice and only requires notice at

[3] https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-059/LETTERS-MEMOS-TARIFFS/19-059_2019-09-20_GSEC_RFP_TIMELINE.PDF
[4] https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-053/INITIAL%20FILING%20-%20PETITION/20-053_2020-04-22_GSEC_2020_DEFAULT_SERVICE.PDF
[5] https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-054/INITIAL%20FILING%20-%20PETITION/20-054_2020-04-22_EVERSOURCE_2020_DEFAULT_SERVICE.PDF
[6] These default service solicitation schedules always seem to be presented as "proposed" yet there seems to be no actual explicit approval by the PUC of these "proposals" until after the fact, upon issuance of approval of the solicitation results by the PUC.
[7] https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-039/INITIAL%20FILING%20-%20PETITION/20-039_2020-03-26_UES_CVR_LTR_2020_DEFAULT_SERVICE_SCH.PDF
[8] https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-039/INITIAL%20FILING%20-%20PETITION/20-039_2020-03-26_UES_2020_DEFAULT_SERVICE_SCH.PDF

some point in time before issuance of the RFP, presumably at least the preceding day. Again, at least in this one instance, a CPA in Unitil territory would have had to have guessed in advance when that notice day might be as there was no formal or public notice by Unitil as to the scheduled date for RFP issuance until nearly two weeks after the deadline.

Utility proposed regulations regarding (1) constraining launch to the first or last 45 days of a default service term; and (2) requiring CPAs with more than one utility to tie notice of their launch to the earliest of the utility default service solicitations, conflict with one another and create a mess of confusion.

The Utility suggested revisions seek to constrain a launch (for CPAs over a particular load size) to within either the first or last 45 days of a default service delivery term, and once elected, require all customers to be transferred to be enrolled within the selected 45 day launch window. There are several problems with this. First, both the Utility and Staff proposals require notice linked to the earliest RFP issuance date where the CPA territory is served by more than one utility. So for a CPA (including several potential County CPAs) with customers in both Unitil and Eversource or Liberty territory, in order to launch in August, or January of the next year, they would need to give notice by March 3 (assuming the 2020 schedule) under the Utility proposed revisions and by approximately January 2 with the Staff proposal. And yet there is no 45 day window at the start or end of the two different default service delivery periods[9] that overlaps by even one day between Unitil and Liberty or Eversource – so what is to be done in that circumstance – different launch dates and notification periods for different customers in the same CPA?

Second, neither of these proposals begins to address the circumstance of the NH Electric Cooperative that is within the definition of "utility" under Puc 2002.24 and apparently does not procure default service supply in a way that comports with the 3 investor owned fully regulated electric distribution utilities or how the rules are drafted, having no distinct publicly noticed RFP and no distinct delivery period start and end dates. So how would that work?

As a practical matter, both the Staff and Utility proposals are unrealistic in that they seek to require a new CPA to commit to launching and lock in a commitment to supply and pricing/rates long in advance of knowing the price they are competing with. To be blunt, no elected official in their right mind is going to be willing to lock into pricing and commit to a narrow launch window where there is a distinct possibility that the opt-out letter to be sent to all their constituents will say that unless you opt-out, starting in about 5 weeks, we are going to raise your electricity supply rate by putting you into this new CPA that we have created. That would be an invitation to failure and backlash. The most recent procurements by Eversource and Liberty allow 4½ to 6 weeks between RFP issuance and pricing, indicative only in Liberty's case, with final bids due by Liberty 6 weeks after RFP issuance. Regulatory approval is sought within 1 to 2 weeks, as there is increased risk and cost for a supplier to hold a bid price open for longer periods of time. The proposed rules seem to require a CPA to obtain pricing and either have it held open or lock in for some 2 to 4 months before the rate to compete with is known. That is unrealistic, discriminatory, and ignores the fact that competitive market opportunities for forward fixed pricing constantly change. It is a dynamic market.

We don't believe the PUC has the regulatory authority to require a CPA to actually launch on unfavorable terms or to penalize or sanction subdivisions of the state in any way for not

[9] August through January for Liberty and Eversource and June through November for Unitil.

launching, once they provide notice of intended launch, if "local conditions and opportunities" are deemed unfavorable by the CPA at the time they might send out their notice letters, as much as the Utilities might like to require them to do so. Taking that as a basic assumption, what might be the risk premium for quantities of load that may or may not migrate within the first or last 45 days of a 6-month delivery commitment? We might add that there would be no assurance that utilities or utility default service bidders would know the rate or initial rate term contemplated by CPAs that have given notice of intent to launch within the first 45 days of the new delivery term, because that might be protected confidential commercial information, or not even finalized, before their bids are due, as there is typically sufficient time between when the PUC approves new default service rates and when they go into effect for a CPA to finalize and make public rates for the notice letter to all electric customers within their jurisdiction.

An Alternative Approach to Make Everyone's Life Easier.

Instead of creating such uncertainty on the part of all involved by trying to align CPA initial default service procurement with, and far in advance of, regulated utility default service procurement, there are alternatives. One alternative approach is for the CPA to provide a series of notifications to the utility that give advanced notice of the growing likelihood of a CPA launch. This approach would provide much higher certainty that the launch will actually occur when final notice is given, allowing for systematic management of any risks involved. Each of these notices can be shared publicly by the utility with current and prospective default service providers so they have the information to manage risk and adjust their supply portfolio or hedging accordingly. Here are the notices involved and the minimum time periods following the notice before the next step can be taken:

1. Puc 2007.01 Notice of Formation of an Aggregation Committee by a municipality or county with – signals that they are thinking about starting a CPA – 10 days minimum before next step.

2. Puc 2007.02 Request for Aggregated Load Information – this same information could be supplied by the utility to current and prospective default service load suppliers so they know how much load might be at risk of migration, though it is probably still some months, if not a year or more, before a plan might be approved and a new CPA launched. If after the passage of time (3 months or more) a refresh is requested, that may indicate an effort to advance an aggregation plan.

3. Puc 2007.03 Notification of Adoption of Final Plan for an Aggregation Program, due with 15 days of approval by a legislative body and includes a copy of the approved plan which the utility could share with any current or prospective suppliers (such as by reference and link in the next RFP).

4. Puc 2007.035 (placeholder number) Request for Supplemental Load Information – utility to respond within 15 days -- indicates approved CPA is likely getting close to firming up possible supply procurement and pricing.

5. Puc 2007.04 Request for Names, Addresses and Account Numbers of Customers, with up to 15 days for utility to respond – indicates that a CPA may be within a few weeks of providing a notification of commencement of services. A CPA would be unlikely to request such unless they are anticipating a launch based upon good indicative or firm pricing that looks competitive with the utility default service rate, but they would seem unlikely to give a notice

of launch until they have these addresses and can begin to process them for preparing mailing materials.

6. Puc 2007.05 Notification of CPA Commencement of Services. As proposed, this would require a minimum of 45 days advance notice before commencement of service and enrollment of any electric customers. With monthly bill cycles, the completion of enrollment and transfer of load would not occur until about 75 day following notice, giving a fair amount of time for suppliers to adjust their position accordingly. 45 days roughly corresponds to the lead time between when utility provided default service procurements require firm bids and when the delivery period for the winning bid would start. It is longer than the typical time between PUC approval of the winning bid, when it first becomes firm, and the start of the new delivery period. 45 days is also a reasonable approximation of the minimum amount of time between a CPA locking in a firm price that they can use in their printed notification to all electric customers required by RSA 53-E:7, II and any actual enrollments. From the date of lock-in to mailing drop could take a week or more to finalize text, print, address, and assemble the mailing. Then a minimum of 30 days is required to allow opt-out response to the mailing. Assuming a postcard or other mail based opt-out option is included, several more days would be needed to receive all timely opt-outs, and only then could enrollment through the EDI proceed, so allowing a minimum of a week from commencement notice to mail drop, 30 days for opt-out, and then another week to finalize the list of customers to be enrolled, the whole process should take 45 days or more.

The real point of this whole process, decoupled from the regulated utility procurement cycle, is that it should result in series of notifications that make the last and most important one, notification of commencement of services, ***much more likely, if not certain,*** to actually result in enrollment of customers and transfer of load, rather than what can only be a tentative or conditional commitment to launch under the Staff or Utility proposals, which is more uncertain and risky. Another advantage of this approach, delinked from the regulated procurement cycle, is that multiple CPA launches are *less* likely to cluster together at the start of a delivery period and should be more evenly spread out over time with much greater certainty, mitigating load migration uncertainty and risk exposure to the supplier. This may be particularly true as most towns have their legislative body only meet once a year at town meeting in March, and hence they may tend to clump at the exact same start of the utility summer starting default service delivery period under the Staff or Utility proposal.

Further, this alternative proposal is logical, practical, and understandable in all of the ways that the proposed linkage to the regulatory artifact of utility default service procurement solicitations is not.

The proposed over-regulation of CPAs defeats the legislative intent and purpose of both RSA 374-F and RSA 53-E.

Closely related to these practical and policy concerns is the question of whether linking the start and stop of CPA default electricity service to regulated utility provided default service is consistent with legislative intent. We don't know how the purpose statement of RSA 374-F could have been made more clear, as it clearly calls for the electric industry and its regulation to transition to competitive markets for the supply of electricity and to functionally separate the monopoly wires services from generation supply. It cites the provision of the Constitution of the State of New Hampshire (Part II, Art. 83) that makes free and fair competition a constitutional

right:

> "Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it."

It cites the Restructuring Policy Principles in RSA 374-F:3 as provisions to guide the PUC in its future regulation of the electric distribution utilities. Customer choice is a leading principle as number II and repeated at principle VII under "Full and Fair Competition." Principle III states that "[g]eneration services should be ***subject to market competition and minimal economic regulation***."[10] Principle V(c) states that "[d]efault service should be designed to provide a safety net and to assure universal access and system integrity." Principle XIV states:

> "Administrative Processes. The commission should adapt its administrative processes to make regulation more efficient and to ***enable competitors to adapt to changes in the market in a timely manner***. ***The market framework for competitive electric service should, to the extent possible, reduce reliance on administrative process.*** New Hampshire should move deliberately to replace traditional planning mechanisms with market driven choice as the means of supplying resource needs."

The purpose statement of RSA 53-E, originally enacted less than 3 months after the enactment of RSA 374-F in 1996, is also rather clear:

> **53-E:1 Statement of Purpose. –** The general court finds it to be in the public interest to allow municipalities and counties to aggregate retail electric customers, as necessary, to provide such customers access to competitive markets for supplies of electricity and related energy services. The general court finds that aggregation may provide small customers with similar opportunities to those available to larger customers in obtaining lower electric costs, reliable service, and secure energy supplies. The purpose of aggregation shall be to encourage voluntary, cost effective and innovative solutions to local needs with careful consideration of local conditions and opportunities.

It should also be clear that in enacting the amendments to RSA 53-E last year the General Court no longer wants default service to be a regulated monopoly of the utilities and recognized that local democratic governance can provide an alternative to PUC regulation of default service and that CPAs should be given the statutory authority to act in an agile and timely manner to provide expanded choices for retail customers not already on competitive supply.

What is NH's constitutional right to free and fair competition? This statement in federal law is instructive:

> The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation.[11]

[10] Emphasis added here and in subsequent quotations.
[11] Small Business Act. (Public Law 85-536, as amended), § 2. (a).

Although CPAs will not be private enterprises, RSA 53-E:3-a expressly authorizes CPAs to operate as "self-supporting enterprise funds" and their purpose is to enable a form of community choice through locally accountable democratic control involving both the elected governing bodies and legislative bodies of subdivisions of the state. In turn, our vision of a CPA is one that better engages private enterprise and competitive markets in offering small electricity customers greater choices in their supply of electricity, including more local renewable sources, and value added services such as enabling price based demand response to more appropriate price signals than have thus far been made available to small customers. Some of this will evolve over time as opt-in options.

Large electricity customers and Community Choice Aggregations (CCAs) in other states (to the best of our knowledge) are not required to align their choices for launch of new generation supply with that of a regulatory artifact of a monopoly provided default service procurement cycle, much less to commit to such a switch in a blind manner where the price to compete with is unknown. As the federal law notes, and is widely recognized in economic theory, "free entry into business," the ability of new enterprises to enter and exit markets based on current market conditions and without unreasonable barriers to entry is a key measure of the health of competitive markets. The purpose of CPAs is to provide "cost effective and innovative solutions to local needs with careful consideration of local conditions and opportunities." Tethering the startup, the free entry, of CPA enterprises to a regulatory construct for electricity supply that NH law has called upon the PUC to move away from for the past 24 years and to do so in a manner that is distinctly dissimilar to opportunities "available to larger customers in obtaining lower electric costs" is pretty clearly contrary to legislative intent. And to be blunt, we do not think it would be difficult to convince JLCAR of this point. Furthermore, to constrain or limit a constitutional right a regulatory body would need to show a compelling state interest, with solid evidence, which thus far is lacking here.

For a more detailed review of the (sorry) state of competitive retail electricity markets in New Hampshire, including the importance of low market-entry barriers in well-functioning markets, please see the 8/17/20 pre-filed direct testimony of Samuel Golding in DE 19-197 on behalf of the Local Government Coalition.[12]

Other Issues In the interest of moving along the dialogue on these draft rules, following are some comments on concerns raised by the Utilities.

NDAs The Utilities have suggested that NDAs be required of CPAs. If individual customer data were to be required to be shared with a municipality or county in advance of legislative approval of an aggregation plan and creation of a CPA, we could see how that might be appropriate. However, once the CPA is formed it is under the same legal obligations as the utilities as a service provider under RSA 363:38, pursuant to RSA 53-E:4, VI, which also expressly exempts such information from disclosure under RSA 91-A so no NDAs are needed here. There has also been a suggestion that there should be cyber security standards or reviews for CPAs (i.e. municipal and county governments). That is clearly beyond the regulatory authority of the PUC. Municipalities and counties routinely collect, hold and protect confidential personal information and individual customer data to the extent protected by RSA 91-A.

Puc 2007.07 Provision of Electricity Supply Service We support the language as drafted by

[12] https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-197/TESTIMONY/19-197_2020-08-17_LGC_TESTIMONY_GOLDING.PDF

Staff. Utilities often use more than one supplier at a time to supply default service load. We don't understand what the problem is as long as every customer meter is associated with a single LSE for each meter reading cycle as the draft proposes.

Puc 2007.10 County -. Municipal CPA Priority This should not require changes to the utility EDI system. If a municipal CPA already exists and a County CPA is launched where that muni-CPA is located, the County CPA can simply not be given the names, addresses and account numbers of customers within that muni-CPA, so they won't be able to enroll them. If is the other way around, the muni-CPA would get the information on all electric customers within their municipality, regardless of which default service they are on and they would be able to opt-out of the muni-CPA (or opt-in if they are with a CEPs).

Puc 2007.11 New Utility Service Applicants We understand that the utilities don't like what the law now requires and would like to see the law changed to conform with how they do business in Massachusetts. However, the rule should not be delayed in the hope of changing the law, and a change in the law should not be assumed. That would frustrate legislative intent. We have provided an alternative approach that would take much of burden off the utilities to change their systems by allowing CPAs to handle the initial enrollment of new customers in default supply service, including informing them of their choices, consistent with the statutory requirement.

Puc 2007.13, Unexpected Cessation of CPA Service, Utility proposal for reimbursement requirement. Any cost reimbursement would have to be limited to segregated CPA funds on hand, as RSA 53-E:5 prohibits cost subsidy from non-participating retail electric customers: "no entity shall require them to pay, any costs associated with such program, through taxes or otherwise . . ."

Puc 2007.20 Enabling Access to Interval Meter Data We strongly support Staff's purposed language. It is entirely appropriate for the Commission to address cost sharing for jointly metered through rules, rather than requiring a case by case adjudication for each case and utility. The law expressly enables this option (along with authorizing CPA to read meters, which is not being enabled by the proposed rules but should be). This is consistent with Staff Recommendation on Grid Modernization (1/31/19) where they suggested that advanced meter functionality "could initially be deployed strategically (e.g., by geographical target areas, to large customers, ***through old meter retirement***, through pilots, ***and to early adopters***)." (at 52) They also suggested that "the customer should be responsible for the incremental costs associated with such a meter," which is effectively what the proposed rule does.

Every year the utilities spend tens of thousands of dollars on new meters for new customers and to replace old or defective meters. For Eversource and Liberty these are mostly similar to existing AMR meters that do not collect hourly interval data. Instead of spending that money on legacy metering that is likely to become obsolete before being fully depreciated, the proposed rule provides a formula for the same utility spend, but leverages potential CPA financial contributions to upgrade to modern AMI type interval meters. It does not require any greater expenditure by the utility than what they otherwise have planned. By swapping out the legacy meters with jointly owned AMI meters, the utility can still have the same number of meters of the same type that they would be purchasing for use in their ongoing meter testing and replacement program or for new services. If there is greater demand by CPAs than what the utility would otherwise spend and buy, those requests can be wait listed or alternative

arrangements can be negotiated. It is irrelevant that existing legacy tariffs are not consistent with this approach. The new rule (along with the supporting provisions in RSA 53-E) would trump the tariff and it can be changed to conform with the rule if needed.

Puc 2007.22 Net Metering by CPAs There seems to be a fair bit of confusion and some questions about this section and particularly the provisions of paragraph (b). I'd be happy to further explain this and walk the utilities through the implications of how they need to change their accounting systems in this regard. The proposed rule closely hews to the law that mandates the accounting for any exports to the grid by CEPs or CPA customer-generators as reductions to the electricity supplier's load obligation for energy supply as an LSE (net of lines loss adjustments as approved by the commission).[13]

Proposed Puc 2207.24 Partial Payments Under Consolidated Billing Absent a purchases of receivables program, CPA default service should be put on a level playing field with Utility provided default service, which is to say if a customer makes only a partial payment on an electric bill, then it should be allocated proportionately to both the utility (aged receivables, then current charges) and CPAs (aged receivables, then current charges). Two bills were introduced in the Senate this year to do exactly that. Between the two bills, SB 463 and SB 518, there were 5 Republican Senator sponsors and 5 Democratic Senator sponsors, though the bills were never reported out of committee due to the pandemic shutdown, but this could be addressed by rules.

We look forward to further discussing the proposed rules with Staff and other stakeholders.

Yours truly,

Clifton Below, Assistant Mayor
City of Lebanon

Henry Herndon, Director of Local Energy Solutions
Clean Energy NH

DocuSigned by:
7BFAAAEB027D4D4...
Doria Brown, Energy Manager
City of Nashua

DocuSigned by:
Julia Griffin
D780AA99A3484CA...
Julia Griffin, Town Manager
Town of Hanover

Samuel Golding, President
Community Choice Partners, Inc.

cc: informal service list, via e-mail

[13] Chapter 21, NH Laws of 2020:
http://gencourt.state.nh.us/bill_Status/billText.aspx?sy=2020&id=1055&txtFormat=html